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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

*OFFICE OF ADMINISTRATIVE APPEALS*

*425 Eye Street N.W.*

*BCIS, AAO, 20 Mass, 3/F*

*Washington, D.C. 20536*

FILE:

Office: NEW YORK, NEW YORK

Date:

**JUL 17 2003**

IN RE: Applicant:

APPLICATION:

Application for Certificate of Citizenship pursuant to section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on April 7, 1996, in Addis Ababa, Ethiopia. The applicant's father, [REDACTED] was born in Addis Ababa, Ethiopia on July 10, 1958, and became a naturalized U.S. citizen on February 23, 1990. The applicant's mother, [REDACTED] was born in Addis Ababa, Ethiopia, and is not a U.S. citizen. The applicant's parents were married in October 1991, in Ethiopia. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the evidence in the record failed to establish that the applicant entered the U.S. pursuant to a lawful admission. The application was denied accordingly.

On appeal, the applicant, through counsel, asserts that the airline tickets and passport copies submitted by the applicant constitute proof of the applicant's lawful admission into the United States, and that the applicant therefore qualifies for a certificate of citizenship. Counsel requested an additional 90 days to obtain information from the U.S. Embassy in Ethiopia to further corroborate the applicant's lawful admission into the United States. It is noted that as of the date of this decision no further documentation or evidence has been received by the AAO.

This office finds that the district director erroneously analyzed the applicant's case pursuant to the provisions of section 322 of the Act, 8 U.S.C. § 1433 to the Act. Section 322 of the Act applies to children born and **residing outside** of the United States. The record reflects that the applicant is listed as an accompanying child on his mother's passport and that the applicant's mother entered the U.S. as a conditional permanent resident (CR1) on May 9, 1992. The applicant's mother was readmitted to the U.S. on July 18, 1996, the date listed as the applicant's entry date on his N-600 application. In addition the applicant's N-600 lists his address as Brooklyn and doesn't indicate any departures since his arrival in 1996. Based on the evidence in the record, it thus appears that the applicant has resided in the U.S. since July 18, 1996.

Because the applicant appears to have been residing in the U.S. since 1996, his claim to U.S. citizenship will be analyzed under section 320 of the Act. It is noted that under section 322 of the former Act, an applicant was required to establish a lawful admission into the United States. Under section 320 of the Act, however, the applicant must establish a lawful admission for permanent residence.<sup>1</sup>

<sup>1</sup> Although the applicant's mother has a conditional legal permanent resident stamp and subsequent admission stamp in her passport, no separate residence or admission stamps exist for the applicant. Moreover, it is noted that the airline tickets submitted by the applicant contain no information regarding a lawful admission into the United States. The applicant thus would have failed to establish that he entered the U.S. pursuant to a lawful admission as required by section 322 of the Act.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and the current version took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was only 4 years old on February 27, 2001, he qualifies for CCA benefits under section 320 of the Act.

Section 320 of the Act, as amended, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent **pursuant to a lawful admission for permanent residence.**

The applicant failed to establish that he entered the United States pursuant to a lawful admission for permanent residence. Indeed, the evidence in the record reflects that the applicant is, in effect, currently residing in the United States without a valid immigrant or non-immigrant status.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In this case, the applicant has not met his burden.<sup>2</sup>

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The present decision is without prejudice and does not preclude the applicant's U.S. citizen father from petitioning for legal permanent residence status for the applicant and filing for citizenship pursuant to section 320 of the Act if and when legal permanent residence status is obtained.